

BILL ANALYSIS

Senate Research Center

S.B. 2213
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Oil, gas, coal, and wind energy companies are statutorily required to pay to decommission and adequately dispose of their decommissioned equipment or worn-out parts. These requirements, which already applied to fossil fuel generators, were extended to wind companies by the 86th Legislature, but not to solar.

Failure to properly decommission and dispose of energy infrastructure is an eyesore, a nuisance to current or future property owners, and an environmental hazard. Most solar materials, such as solar panels, are non-recyclable solar panels that can leach toxic chemicals into the environment.

Texas should pursue a level playing field in our energy market. This legislation ensures green energy has a proper decommission plan, similar to that of existing thermal energy, to protect Texas's natural beauty and provide equal treatment of energy sources in the marketplace.

S.B. 2213 defines the following terms for the purpose of the legislation: grantee, electric energy storage facility, and electric energy storage facility agreement.

The bill requires a grantee of an electric energy facility agreement to remove the grantee's electric energy power facilities safely from the landowner's property following provisions laid forth in the legislation and according to any other applicable law or regulation. Similarly, the legislation requires a grantee of an electric energy power facility agreement to provide financial assurance of the grantee's obligation to remove the grantee's electric energy power facilities located on the landowner's property as prescribed by the legislation. The legislation also prescribes the provisions of the financial assurance.

A person who was harmed by a violation of this bill would be entitled to appropriate injunctive relief to prevent further violation. Remedies provided under the bill would be in addition to any other procedures or remedies provided by other law. The bill would take effect September 1, 2021, and would apply only to an electric energy power facility agreement entered into on or after that date.

As proposed, S.B. 2213 amends current law relating to the removal of electric energy storage facilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 6, Utilities Code, by adding Chapter 303, as follows:

CHAPTER 303. ELECTRIC ENERGY STORAGE FACILITY AGREEMENTS

Sec. 303.0001. DEFINITIONS. Defines "electric energy storage facility," "electric energy storage facility agreement," and "grantee."

Sec. 303.0002. APPLICABILITY. Provides that this chapter applies only to electric energy storage that is a generation asset as defined by Section 39.251 (Definitions).

Sec. 303.0003. WAIVER VOID; REMEDIES. (a) Provides that a provision of an electric energy storage facility agreement that purports to waive a right or exempt a grantee from a liability or duty established by this chapter is void.

(b) Provides that a person who is harmed by a violation of this chapter is entitled to appropriate injunctive relief to prevent further violation of this chapter.

(c) Provides that the provisions of this section are not exclusive. Provides that the remedies provided in this section are in addition to any other procedures or remedies provided by other law.

Sec. 303.0004. REQUIRED AGREEMENT PROVISIONS ON FACILITY REMOVAL.

(a) Requires an electric energy storage facility agreement to provide that the grantee is responsible for removing the grantee's electric energy storage facilities from the landowner's property and that the grantee is required, in accordance with any other applicable laws or regulations, to safely:

(1) clear, clean, and remove from the property each piece of electric energy storage equipment, including any transformers or substations;

(2) for each foundation of electric energy storage equipment, including a transformer or substation installed in the ground, clear, clean, and remove the foundation from the ground to a depth of at least three feet below the surface grade of the land in which the foundation is installed; and ensure that each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the property;

(3) for each buried cable, including power, fiber-optic, and communications cables, installed in the ground, clear, clean, and remove the cable from the ground to a depth of at least three feet below the surface grade of the land in which the cable is installed; and ensure that each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the property; and

(4) clear, clean, and remove from the property each overhead power or communications line installed by the grantee on the property.

(b) Requires that the agreement provide that, at the request of the landowner, the grantee is required to clear, clean, and remove each road constructed by the grantee on the property, and to ensure that each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the property.

(c) Requires that the agreement provide that, at the request of the landowner, if reasonable, the grantee is required to:

(1) remove from the property all rocks over 12 inches in diameter excavated during the decommissioning or removal process;

(2) return the property to a tillable state using scarification, V-rip, or disc methods, as appropriate; and

(3) ensure that each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the property, and that the surface is returned as near as

reasonably possible to the same condition as before the grantee dug holes or cavities, including by reseeding pastureland with native grasses prescribed by an appropriate governmental agency, if any.

(d) Requires the landowner to make a request under Subsection (b) or (c) not later than the 180th day after the later of the date on which the electric energy storage facility is no longer capable of storing electricity in commercial quantities, or the date the landowner receives written notice of intent to decommission the electric energy storage facility from the grantee.

Sec. 303.0005. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL ASSURANCE. (a) Requires that an electric energy storage facility agreement provide that the grantee is required to obtain and deliver to the landowner evidence of financial assurance that conforms to the requirements of this section to secure the performance of the grantee's obligation to remove the grantee's electric energy storage facilities located on the landowner's property as described by Section 303.0004. Provides that acceptable forms of financial assurance include a parent company guaranty with a minimum investment grade credit rating for the parent company issued by a major domestic credit rating agency, a letter of credit, a bond, or another form of financial assurance acceptable to the landowner.

(b) Requires that the amount of the financial assurance be at least equal to the estimated amount by which the cost of removing the electric energy storage facilities from the landowner's property and restoring the property to as near as reasonably possible the condition of the property as of the date the agreement begins exceeds the salvage value of the electric energy storage facilities, less any portion of the value of the electric energy storage facilities pledged to secure outstanding debt.

(c) Requires that the agreement provide that:

(1) the estimated cost of removing the electric energy storage facilities from the landowner's property and restoring the property to as near as reasonably possible the condition of the property as of the date the agreement begins and the estimated salvage value of the electric energy storage facilities is required to be determined by an independent, third-party professional engineer licensed in this state;

(2) the grantee is required to deliver to the landowner an updated estimate, prepared by an independent, third-party professional engineer licensed in this state, of the cost of removal and the salvage value at least once every five years for the remainder of the term of the agreement; and

(3) the grantee is responsible for ensuring that the amount of the financial assurance remains sufficient to cover the amount required by Subsection (b), consistent with the estimates required by this subsection.

(d) Provides that the grantee is responsible for the costs of obtaining financial assurance described by this section and costs of determining the estimated removal costs and salvage value.

(e) Requires that the agreement provide that the grantee is required to deliver the financial assurance not later than the earlier of the date the electric energy storage facility agreement is terminated, or the 10th anniversary of the commercial operations date of the electric energy storage facilities located on the landowner's leased property.

(f) Defines, for purposes of this section, "commercial operations date."

(g) Prohibits the grantee from canceling financial assurance before the date the grantee has completed the grantee's obligation to remove the grantee's electric energy storage facilities located on the landowner's property in the manner provided by this chapter, unless the grantee provides the landowner with replacement financial assurance at the time of or before the cancellation. Requires that the financial security provided by the grantee, in the event of a transfer of ownership of the grantee's electric energy storage facilities, remain in place until the date evidence of financial security meeting the requirements of this chapter is provided to the landowner.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2021.